



Employee Plans

Internal Revenue Service

Rulings & Agreements Overview

Northeast Benefits Conferences

June 10-11, 2004

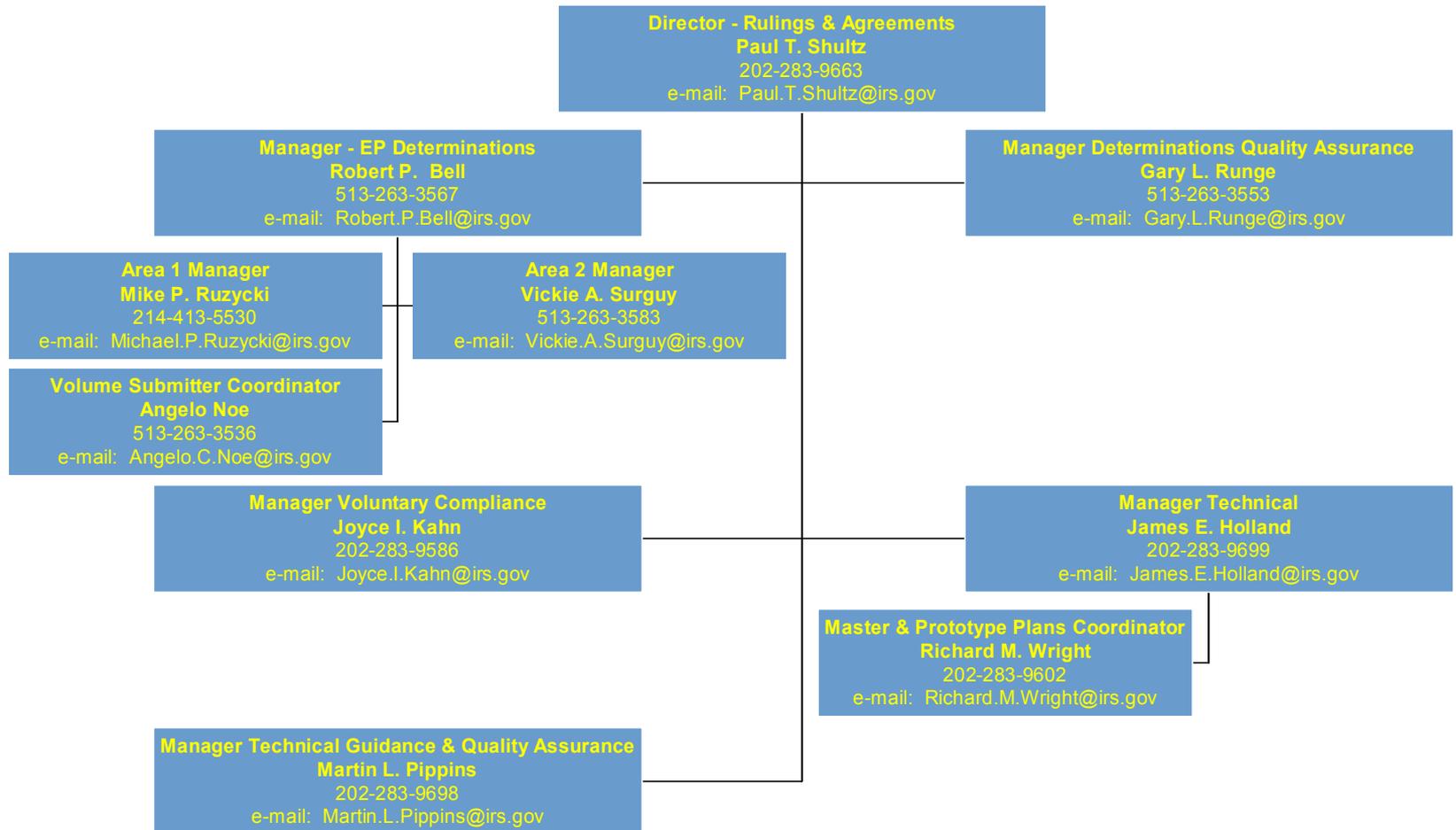


Rulings & Agreements

- Finish up GUST determination letter applications, by mid-Feb. 2005?
- Plan for future determination process, including EGTRRA submissions
- Fine tune Voluntary Compliance unit
- Address abusive tax shelters using plans
- Administer minimum funding rules for DBs



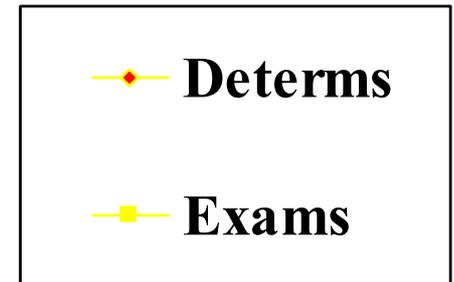
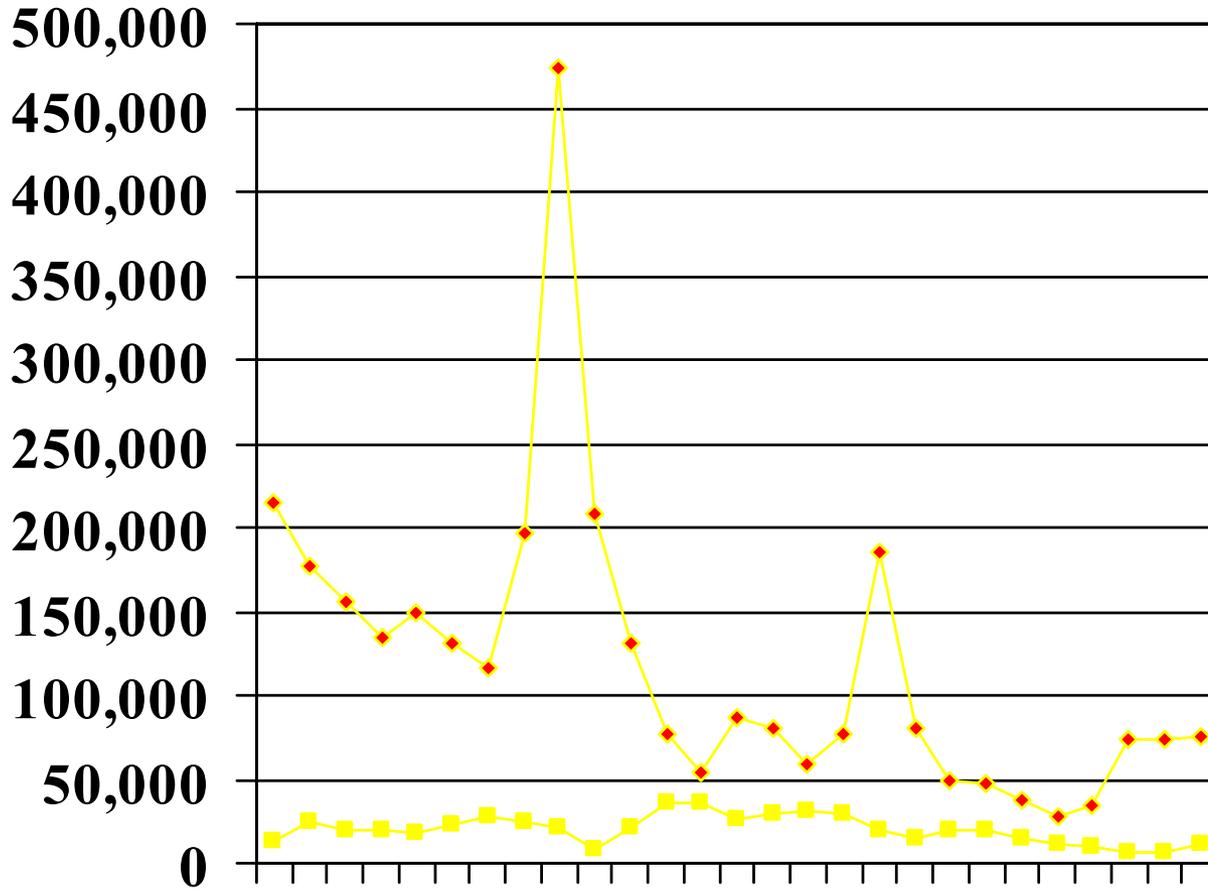
EP – Rulings and Agreements





Employee Plans

Determinations and Examinations “at a Glance”



- 1978 ERISA Final Regulations
- 1986 TDR
- 1994 TRA '86
- 2002-04 GUST

1978 1981 1984 1987 1990 1993 1996 1999 2002



Receipts for FY 2002

Forms 5300/5303	40,000
Forms 5307/6406	25,000
Form 5310	8,000
Total:	73,000



Receipts for FY2003

Forms 5300/5303	7,200
Forms 5307/6406	59,800
Form 5310	7,000
Total:	74,000



Projected Receipts for FY2004

Forms 5300/5303	8,000
Forms 5307/6406	59,500
Form 5310	7,500
Total for fiscal year:	75,000



GUST RAP Receipt Summary (FY2002-04)

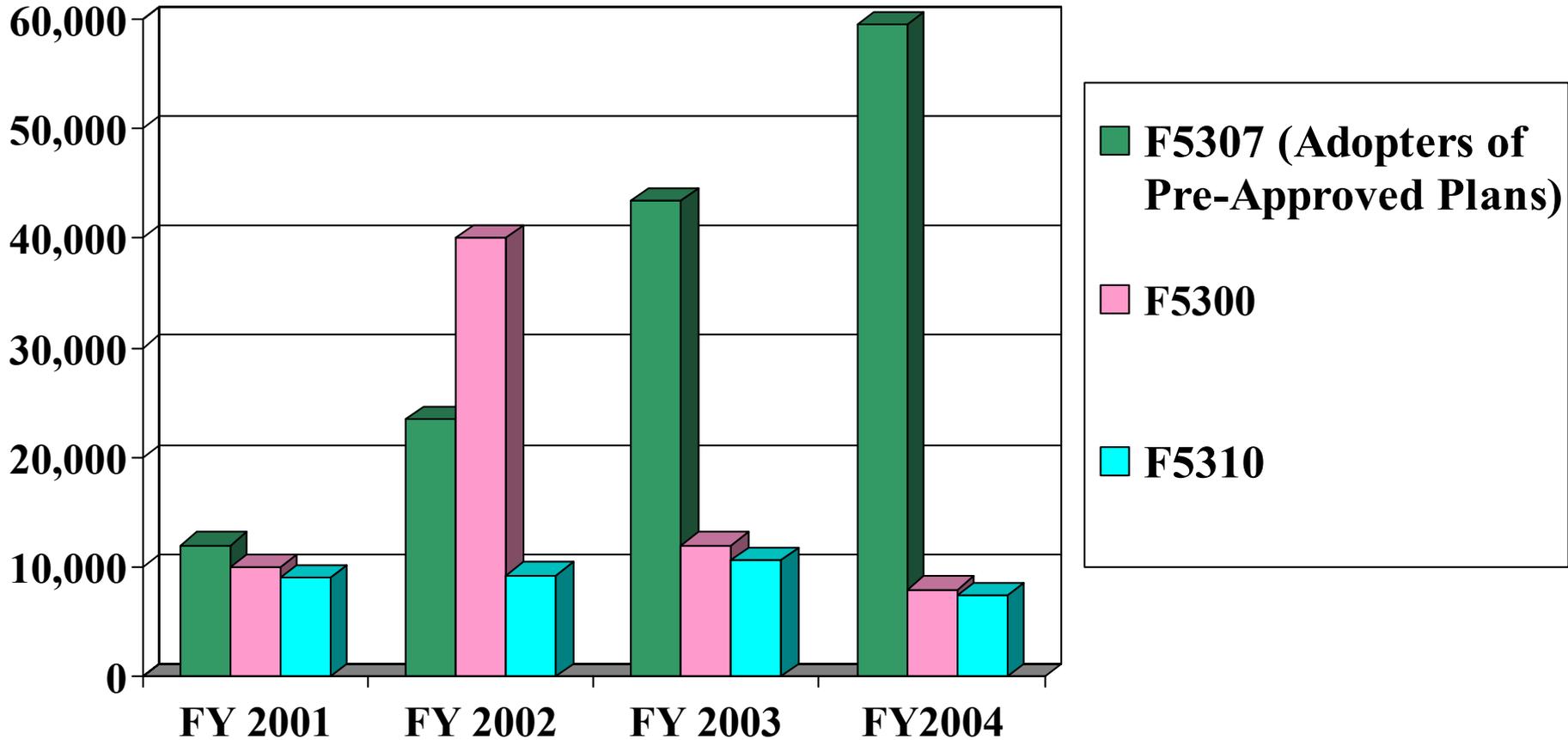
	Originally Expected	Projected Actual
Forms 5300/5303	100K	55K
Forms 5307/6406	170K	145K
Form 5310	30K	25K
Total Applications	300K	225K

Note: Normal year = 30,000 total applications



Employee Plans

“GUST” Actual Receipts





Rulings & Agreements -- Determination Letter Program

- Why fewer applications?
 - IDPs:
 - Migration to pre-approved plans
 - Pre-approved plans:
 - Optional filing for word for word adopters



Rulings & Agreements -- Determination Letter Program

- What's coming up from here?
 - Combination of M&P and VS programs? -- Ann. 2004-33
 - Non-EGTRRA substantive amendments get EGTRRA RAP -- Rev. Rul. 2004-25
 - Pre-approved plan effective date changes hurt identical adopter status -- see Draft Rev. Proc. Attached to Ann. 2004-33
 - Model plan documents?



Rulings & Agreements -- Determination Letter Program

- What's coming up from here? (continued)
 - Operating manuals? SEP/SIMPLE; 403(b); 401(k)
 - Specialization of personnel? (Determs team)
 - Customer service improvements? (Another team)
 - QABs on Website
 - Powers of Attorney (Form 2848) Issue?



IRS Pre-Approved Plans (Listed at www.irs.gov/ep)

Master & Prototype Specimens

- 200 sponsors
- 1,000 plans total
- Reviewed in Washington D. C.
- Number of adopting employers:
More than one half million
(primarily standardized plans)

Volume Submitter Plans

- 350 sponsors submitted plans
- 1,100 plans total
- Reviewed in Cincinnati and Areas
- Projected adopting employers 140,000



Plan Statistics 2003-04

- DB Plans -- 26,000 plans, 20 million participants (16.8% of private WF), 1.58 trillion assets
- DC Plans -- 840,000 plans, 64.3 million participants (58.2% of private WF), 2.68 trillion assets
- Government Plans -- 2,200 systems, 14 million participants (75.1% of gov. WF), 1.97 trillion assets
- IRAs -- 2.33 trillion assets, 3.5 million returns/deductions (2.7%)
- Social Security -- 42 million beneficiaries



Staffing for FY 2004

- 155 Agents Total -- All part of Determinations
 - 60 Agents in Cincinnati
 - Some doing technical screening
 - 95 Agents working determinations in their respective geographic locations
 - Some doing technical screening



Rulings & Agreements -- Determination Letter Program

- Why not file and move cases electronically?
 - Major systems redesign
 - Releases over next few years
 - Started pilot for 5307 in 2003
 - Capture data, maintain electronic file of plan and application that would be available for assignment, review and status updates
 - Eventually, self-service checking on status and filing of application



Future of the Determination Letter Program

- White Paper in 2001 -- 9 Options:
 - Maintain status quo?
 - Eliminate DLs?
 - Eliminate DLs for individually designed plans?
 - Third-party certification?
 - Self-certification?
 - Annual registration?
 - DLs only on adoption and termination?
 - Staggered approach?
 - Amend after legislation and again after guidance?





Future of the Determination Letter Program

- Second White Paper May 2003
 - Status Quo
 - Staggered Expiration of RAPs





Future of the Determination Letter Program

➤ Comments on Second White Paper

- IDP practitioners in general favor staggered approach
- M&P sponsors favor status quo

➤ Bifurcated approach?

- ID plans on staggered approach
- M&P and Volume Submitter sponsors on loose 6-year program -- DCs come in in year 1 and DBs in year 3
- Impact of consolidation of procedures for M&P and VS programs?



Future of the Determination Letter Program



- Recent and Next Steps:
 - General notice -- Ann. 2004-32
 - Draft revenue procedure describing revised DL program for comment -- Summer 2004
 - Draft revenue procedure describing consolidation of procedures for M&P and VS programs for comment -- Ann. 2004-33
- Extensive mathematical modeling of new system
- Timeline for implementation



Contact Information

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Technical Questions? Call our Customer Account Services on 1-877-829-5500; phone preferred.

EP Guidance & General Information is available at www.irs.gov/ep

E-mail is the preferred method of contact.





Recent Guidance and Current Projects

➤ Recent Guidance

– Defined Benefit Funding Guidance

- Ann. 2004-38
- Ann. 2004-43
- Ann. 2004-51
- Interest rate
- Not affect lump sums
- Law signed Saturday, guidance out Monday, pre April 15





Recent Guidance and Current Projects



➤ Recent Guidance

– Cash Balance Plans

- Age discrimination proposed regulations – December 2002
 - Traditional defined benefit plans
 - New cash balance plans
 - Converted cash balance plans
 - Pension equity plans
 - Benefits & contributions nondiscrimination portion withdrawn
 - Appropriations rider
- Interest rates proposed regulations? -- Revision of Notice 96-8 theory
- Accrual rule problem (133 1/3% rule)
- Converted plans DL applications -- Ann. 2003-1
- Treasury's Legislative proposal



Recent Guidance and Current Projects (continued)



➤ Recent Guidance

- Final 417(a)(3) Relative Value Regulations
 - Result of Congressional interest
 - Require comparisons of lump sums and annuities
 - Intended to assure greater level of informed participation
 - E.D. pushed forward to 7/1/04
 - Comments and concerns about effective date being considered



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Proposed 411(d)(6) reg. sec. 1.411(d)-3 for DB plans
 - Can eliminate redundant or non-core optional forms of benefit
 - Per EGTRRA, can reduce burdensome or complex early retirement benefits or retirement-type subsidies by de minimis amount
 - Defines early retirement benefit and retirement-type subsidy
 - Addresses case law
 - Shutdown benefits - follows Bellas, a change in IRS position
 - Post-retirement enhancements protected, contra Sheetmetal Workers
 - Can combine amendments, contra Riverside Cement
 - Permitted forfeitures - reserved for S.Ct. Heinz decision



Recent Guidance and Current Projects (continued)



➤ Recent Guidance

– Final and Proposed Minimum Distribution 401(a)(9) Regulations

- Final regulations for defined contribution plans
- Proposed regulations for defined benefit plans and annuities paid from DC plans and IRAs
- Concern about impact of DB portion of regulations
- Extension of time for compliance with regulations -- Notice 2003-2 and Rev. Proc. 2003-10
- DB plan amendment postponed to end of EGTRRA remedial amendment period
- Comply until then with 1987 or 2001 or 2002 regulations
- Deemed to satisfy until guidance is issued



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Final regs re retroactive annuity starting dates under 417(a)(7)
- Mortality tables under 412(d)(7) -- request for comments -- Notice 2003-62





Recent Guidance and Current Projects (continued)



➤ Recent Guidance

- EPCRS -- Rev. Proc. 2003-44
 - Supersedes Rev. Proc. 2002-47
 - Fixed fee schedule
 - SIMPLE guidance
 - Simplified Group Submission Procedure
 - Relief available for EGTRRA non-amenders
 - Clarifications for correction of spousal consent (QJSA) failures
 - Website helps and new CD-ROM
 - Next Rev. Proc. scheduled for June -- no major changes



Recent Guidance and Current Projects (continued)



➤ Recent Guidance

– 401(k) and (m) Proposed Regulations

- Consolidation of existing guidance
- Guidance on EGTRRA changes
- Addresses bottom-up leveling
- Eliminates mandatory disaggregation for ESOPs
- Finalize by end of 2004



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Catch-up contributions -- Final 414(v) Regs.
 - Universal availability requirement issue
 - Exception for collectively bargained plans
 - No exception for multi-employer plans
 - Prohibition on plan language re accelerated deductions





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Relief from excise tax under 4980 (RR 2003-85) - if > 25% transferred:
 - Recipient plan is still qualified replacement plan
 - Amount transferred not includible by employer, not treated as a reversion, and no deduction allowed
 - Amount received by employer taxed at 20% rate, and is includible in income under sec. 61
- Significant shift in IRS position – conflicting PLRs from 1980's Policy:
 - helps participants
 - 4980 intended as recapture tax, not punitive
 - encourages less reversion



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– Plan expenses guidance -- Rev. Rul 2004-10

- Allocation of expenses as allowed under DOL FAB 2003-3 doesn't violate significant detriment rule of 1.411(a)-11(c)(2)(i)
- Cautions that, depending on the facts, allocation may violate nondiscrimination requirements



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– M&A transition rule on coverage testing --
Rev. Rul. 2004-11

- Explains transition relief for M&A's under 410(b)(6)(C)
- Significant change in plan coverage curtails 410(b)(6)(C) transition period as of date of change, but not retroactively
- Request for comments for more comprehensive guidance



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– Rollovers made easier

- Rev. Rul. 2004-12
- Permits distribution of separate rollover accounts without regard to distributable events of receiving plan
- 401(a)(11), 417, 401(a)(9), and 72(t) continue to apply, if applicable to receiving plan
- Applies to 401(a), 403(b) and 457 plans and IRAs
- Enhances portability



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Top-heavy exception for 401(k) plans -- Rev. Rul. 2004-13
 - Exception for 401(k) plans under 416(g)(4)(H)
 - Top-heavy rules don't apply if plan satisfies 401(k)(12) or 401(m)(11) safe harbors and no other contributions are made
 - Rev Rul describes other situations where plan falls out of 416(g)(4)(H) exception



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Funding waiver application rules -- Rev. Proc. 2004-15
 - Updates rules for applying for waiver of minimum funding under 412(d)
 - Must show temporary substantial business hardship
 - New requirement for info on executive comp arrangements



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– Electronic delivery of 1099 and 5498

- Notice 2004-10, issued in January
- Clarifies that plan administrators may deliver 1099's electronically if participants agree
- Form instructions for payors did not allow electronic delivery
- Effective for 2003 and subsequent years



Recent Guidance and Current Projects (continued)

➤ Abusive Tax Shelter Guidance (ATS)



- Check out website www.irs.gov/ep
- 412(i) Guidance
 - Fully insured DB plans not subject to funding requirements
 - Creative promoters market insurance with cash values that spring after distribution of policy following termination of plan
 - Prior guidance -- Rev. Rul. 94-75 and Notice 89-25, Q & A-10
 - Guidance to sort out good from bad practices
 - Listed as tax shelter requiring disclosures
 - Exam program



Recent Guidance and Current Projects (continued)

➤ Abusive Tax Shelter Guidance (ATS)



– ESOP S Corp. Effective Date Issue -- Rev. Rul. 2003-6

- EGTRRA tightened S corp. ESOP rules in 409(p)
- Effective March 14, 2001
- Exception for existing S corp. ESOPs, to 1/1/05
- Shell corporations and shell ESOPs being marketed
- Insubstantial benefits cause invalidity
- Listed tax shelter requiring disclosures

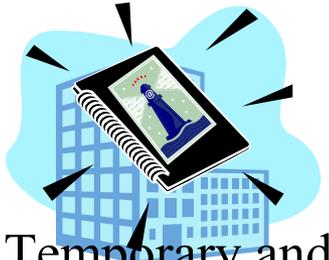


Recent Guidance and Current Projects (continued)

- Abusive Tax Shelter Guidance (ATS) –
 - Rev. Rul. 2004-4 – ESOP S Corp. qualified subsidiaries
 - ESOP-owned Q Subs
 - Listed transaction requiring tax shelter disclosures
 - Transition rules



Recent Guidance and Current Projects (continued)



➤ Abusive Tax Shelter Guidance (ATS)

- ESOP S Corporation management company guidance -- Temporary and proposed 409(p) Regulations
 - Management establishes S corporation to provide management services
 - S corporation establishes ESOP and ESOP holds all S corporation shares; management sole beneficiaries
 - S corporation profits flow through to ESOP and escape tax
 - Management takes modest salaries from S corporation, balance in deferred compensation
 - Proposed regulations to shut down practice
 - Rationale: deferred compensation “synthetic equity”
 - Listed as tax shelter requiring disclosures



Recent Guidance and Current Projects (continued)

➤ Abusive Tax Shelter Guidance (ATS)

– Roth IRAs

- Notice 2004-8 issued December 31, 2003
- Targets shielding of income earned in Roth IRA owner's business by sale to the IRA at less than fair market value
- May be prohibited transaction under 408(e)(2)(A) and 4975
- 4973 excise tax on excess contributions may be imposed
- 482 transfer rules may be applied if not arms length sale
- Listed transaction requiring tax shelter disclosures



Recent Guidance and Current Projects (continued)

➤ Abusive Tax Shelter Guidance (ATS)



– Notice on 419A(f)(5)

- Collectively-bargained exception to funded welfare plan rules of 419/419A
- Sham unions being marketed
- Intent to close down practice
- Listed as tax shelter requiring disclosures



Recent Guidance and Current Projects (continued)

➤ Abusive Tax Shelter Guidance (ATS)



– Final 419A(f)(6) Regulations

- 10-or-more employer exception to funded welfare plan rules of 419/419A
- Define “experience rated”
- Few changes from proposed regs
- Listed as tax shelter requiring disclosures



Recent Guidance and Current Projects (continued)

➤ Current Projects

– Proposed 403(b) Regulations

- No regulations since 1960's
- Consolidate guidance and capture learning
- Reflect legislative changes
- Update of Examination Guidelines
 - To reflect EGTRRA changes
 - By FY2004 (hoping . . .)





Recent Guidance and Current Projects (continued)



➤ Current Projects

– Phased retirement

- Demographic, other pressures
- Countervailing retirement policy concerns
- Statutory barriers
- Vast scope of regulatory/guidance changes necessary
- Target date 6/30/04



Recent Guidance and Current Projects (continued)



➤ Current Projects

- Proposed regs under section 415
 - Update to reflect many changes in law
 - Target date of 6/30/04
- Deemed IRAs under 408(q) -- final regulations coming
 - Single trust v. separate trust issue



Recent Guidance and Current Projects (continued)



➤ Current Projects

- Extension of amortization periods under 412(e)
 - Update of Rev. Proc. 79-61
 - Multiemployer under-funding
 - Long-term health of plan paramount concern
 - Goal is to speed up processing of requests
 - Info required on employers, industry, funding projections
 - Equal sharing of pain – what other steps taken?



Recent Guidance and Current Projects (continued)



➤ Current Projects

– Military service accruals

- Differential salary payments to military reservist employees on active duty
- Are employees on active duty still employees?
- Intersection with USERRA
- Rev. Rul. 69-136 – not employees for employment tax
- Rev. Rul. 73-238 – accruals for former employees violate exclusive benefit rule



Recent Guidance and Current Projects (continued)



➤ Current Projects

- Possible violations of nondiscrimination rules – tax abuse:
 - One day employees
 - Different benefit structures for owners/nonowners
 - Meaningful benefits
- Plan to do guidance applying the anti-abuse standards of regulations under 401(a)(4) to prohibit at least first listed activity



Recent Guidance and Current Projects (continued)



➤ Current Projects

- 457 guidance revenue ruling -- now completed
 - Employer v. union establishes and maintains 457(b) governmental plan
 - Target 6/30/04
 - Rev. Rul. 2004-57 & Ann. 2004-52
- 457 model language
- Update group trust Ruling (81-100) re 457 and 403(b) plan participation



Recent Guidance and Current Projects (continued)



➤ Current Projects

- Electronic technologies, generally
 - Notices from employers to participants
 - Communication by plan sponsors with the Service
 - Harmonize our rules with those of the rest of the Service and DOL
 - Just starting project



Recent Guidance and Current Projects (continued)



- Current Projects -- now completed
 - Transfers to retiree health accounts under 420 -
 - Final Reg.
 - Whether employer incentive - e.g. increased pension accruals - to drop retiree health coverage is counted against employer for cost maintenance requirement
 - Target date 6/30/04



Rulings & Agreements -- Voluntary Compliance Prog.

- “Stood up” two years ago -- 4 managers, 3 national coordinators, 30 employees across U.S.
- Coordinates closely with exams -- 5 area audit coordinators
- Working inventory -- increasing receipts
- VC Council; Coordination Committee
- New Rev. Proc. 2003-44





R & A -- VC Program -- Basic Elements of EPCRS

- *Self*-correction of failures - generally does not require Service approval or the payment of any fee/sanction
- *Voluntary* correction of failures - requires Service approval and the payment of a fee
- Correction of failures identified *on audit* - requires Service approval and the payment of a negotiated sanction



R & A -- VC Program -- General

- Applies to:
 - Qualified Plans
 - 403 (b) Plans
 - SEPs, and
 - SIMPLE IRAs
- Plan Sponsors may correct any type of “Qualification” Failure
- Voluntary Correction of failures – requires Service approval and the payment of a fee



R & A -- VC Program -- General

- Prior to modification by RP 2003-44, VCP consisted of separate procedures, defined by type of failure and/or type of plan
- Under Rev. Proc. 2003-44, all of EPCRS' voluntary correction procedures were consolidated into a single Voluntary Correction Program (VCP); special procedures (e.g., VCO, VCS, VCT, and VCSEP) were eliminated
- In addition, EPCRS was expanded to cover SIMPLE IRAs



R & A -- VC Program -- VCP Compliance Fees

- Completely revised and reorganized VCP compliance fee structure
- Established a fixed fee for all VCP requests (including Anonymous Submissions) that is generally based on the number of participants/employees in the plan, as outlined on the following slides





R & A -- VC Program -- EGTRRA Non-Amenders

- EPCRS is now available to correct Qualified Plans that have failed to adopt timely good faith plan amendments for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)



R & A -- VC Program -- EGTRRA Non-Amenders (continued)

- Upon completion of submission, a compliance statement will be issued
 - NOTE: For ongoing plans, since our determination letter program has not opened for EGTRRA amendments, a determination letter will not be issued
- Plan Sponsor must adopt the good faith amendments within the time period specified in the compliance statement



R & A -- VC Program Anonymous & Group Submissions

- Continue be ongoing parts of VCP
- Expanded to apply to SEPs and SIMPLE IRA Plans
- Anonymous Submissions - Guidance was added regarding when to submit:
 - Power of attorney statement,
 - Penalty of perjury statement, and
 - Related determination letter applications



R & A -- VC Program

Anonymous & Group Submissions

(continued)

- Group Submission process was simplified:
 - A power of attorney for each affected plan is no longer required
 - Eligible Organization must provide notice to affected Plan Sponsors regarding the Group Submission
 - Once the compliance statement is issued, the Eligible Organization must submit a certification that each affected Plan Sponsor received the notice



R & A -- VC Program

Anonymous & Group Submissions

(continued)

- Notice must be provided at least 90 days before the Eligible Organization provides the required certifications and identifying information regarding the affected plans to the Service
- Plan Sponsor may opt out of coverage by Group Submission



R & A -- VC Program -- Miscellaneous Helps

- Added Appendix D -- sample formats for VCP submissions
- Provided tools on internet:
 - Red-lined version of rev proc
 - Table of changes (side by side)
 - Topical index
 - PowerPoint presentation on changes
- CD-Rom available (free!)
- Joint brochure with DOL & PBGC



Rulings & Agreements -- Technical Groups in DC

- Re-engineering of Technical
- Focus group meeting on PLR program
- Internal focus group on technical advice work
- Best practices memo
- Emphasis on customer service





Rulings & Agreements -- Technical Groups in DC

- Rollover period extensions -- received over 150 requests, responded to 80 so far
 - Circumstances
 - Money trail
 - Advice received
- Funding waiver requests -- 77 so far in FY04, vs. 64 in FY03, 57 FY02, 25 FY01 & 12 average each prior year
- Amortiz. exts. under 412(e) requests likely work
- Short-fall method requests not favored





?? Questions ??

- Call: 1-877-829-5500
- Visit: EP Customer Account Services section of the Retirement Plans web page: www.irs.gov/ep for email address -- be sure to leave phone number!

